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August 7, 1998

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FEDERAL BUREAU OF INVESTIGATION
U.S. DEPARTMENT OF JUSTICE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 98-18
RM-9204
RM-9326

Dear Ms. Salas:

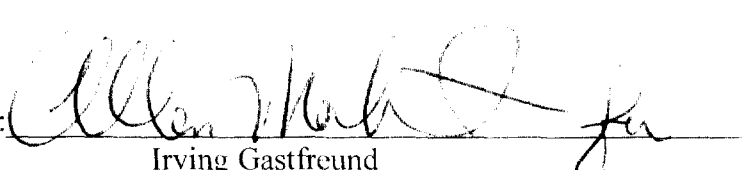
On behalf of U.S. Broadcasting Limited Partnership, we are herewith filing an original and four (4) copies of its "Reply Comments" in the above-referenced proceeding.

Should any questions arise with respect to this matter, please contact the undersigned counsel.

Respectfully submitted,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP

By:


Irving Gastfreund

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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
Amendment to Section 73.202(b)) MM Docket No. 98-18
Table of Allotments) RM-9204
FM Broadcast Stations)
(Macon and Hampton, Georgia))
)
Dogwood Communications, Inc.) File No. BPH-980309IE
WAMJ(FM), Rosewell, Georgia) RM-9326
)
For Construction Permit for)
Modification of Facilities)

TO: Chief, Allocations Branch
Mass Media Bureau

**REPLY COMMENTS OF
U.S. BROADCASTING LIMITED PARTNERSHIP**

U.S. Broadcasting Limited Partnership ("USBLP"), pursuant to Public Notice released July 23, 1998,¹ submits the following Reply Comments.

1. The Public Notice announced that the application of Dogwood Communications, Inc. ("Dogwood") for a construction permit for modification of the facilities of Radio Station WAMJ(FM), Rosewell, Georgia, "will be treated as a counterproposal in MM Docket No. 98-18" and directed the filing of Reply Comments to the counterproposal no later than fifteen (15) days after the date of the Public Notice.

¹ *Office of Public Affairs Reference Operations Division Petitions for Rulemaking Filed, Report No. 2285 (released July 23, 1998) (the "Public Notice").*

2. USBLP² and Dogwood have entered into an Agreement (attached hereto as Exhibit 1) dated as of August 6, 1998.

3. Under the terms of the Agreement, USBLP agrees to file comments in this proceeding asking that the reference point specified in USBLP's rulemaking petition and comments³ be deleted and that the reference point for the WPEZ(FM) transmitter site be changed to: 33° 15' 04" North, 84° 25' 10" West.

4. Under the terms of the Agreement, Dogwood agrees to tender an amendment to its application File No. BPH-980309IE to specify as its transmitter site the roof of the building at 1050 Crown Pointe Parkway, Atlanta, Georgia (the "Crown Pointe Site").⁴ Dogwood also agrees to withdraw with prejudice its April 13, 1998, "Comments and Counterproposal" and its April 29, 1998, "Reply Comments" filed in this proceeding which oppose the modification of the WPEZ(FM) license. Dogwood further agrees to file comments that support the proposed modification of the WPEZ(FM) license with the amended reference point.

5. Under the terms of the Agreement, the changes proposed by Dogwood and USBLP and the filings contemplated therein are mutually contingent, and neither party will be obligated to file or retain any of the changes or file any comments with the FCC if the other party

² USBLP tendered the petition for rulemaking that initiated this proceeding and that requested reallocation of Channel 300C1 from Macon, Georgia to Hampton, Georgia, and the modification of the license for WPEZ(FM) to specify Hampton as its community of license. *Notice of Proposed Rulemaking*, 13 FCC Rcd 2994 (1998).

³ November 19, 1997, Petition for Rulemaking (RM-9204); April 13, 1998, "Comments of U.S. Broadcasting Limited Partnership", and April 29, 1998, "Reply Comments of U.S. Broadcasting Limited Partnership" (collectively, "Comments").

⁴ The geographic coordinates of the Crown Pointe Site have previously been specified as 33° 55' 48" North, 84° 20' 45" West. However, Dogwood and USBLP have concluded and agreed that the coordinates should be corrected to 33° 55' 54" North, 84° 20' 43" West.

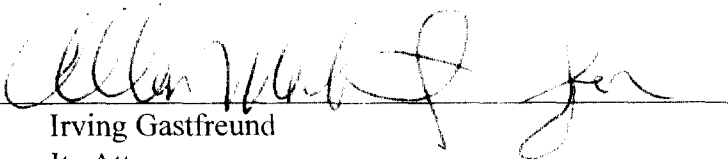
does not make or retain the requisite filings with the FCC as required by the Agreement. Once the documents are filed by both parties, however, neither party may withdraw or modify its position in a manner which will adversely affect the other party's proposed or requested modification of their respective FCC authorization.

6. Pursuant to Section 1.420(j) of the Commission's Rules, attached hereto as Exhibit 2 is a facsimile version of a Declaration of a principal of U.S. Broadcasting Limited Partnership. The original signed Declaration will be filed upon receipt.

7. USBLP herewith deletes the reference point specified in its Petition for Rulemaking and in its Comments. USBLP also changes the reference point for its proposed allotment to: 33° 15' 04" North, 84° 25' 10" West.

Respectfully submitted.

U.S. BROADCASTING LIMITED PARTNERSHIP

By: 
Irving Gastfreund
Its Attorney

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, LLP
901 Fifteenth Street, N.W.
Suite 1100
Washington, D.C. 20005-2327
(202) 682-3500

August 7, 1998

EXHIBIT 1

AGREEMENT

This Agreement is made this 6th day of August 1998 by and between Dogwood Communications, Inc. ("Dogwood"), a corporation organized under the laws of the State of Delaware, and U.S. Broadcasting Limited Partnership ("USBLP"), a limited partnership formed under the laws of the State of Georgia.

Recitals

WHEREAS, Dogwood holds a construction permit (the "CP") from the Federal Communications Commission ("FCC") to build a new Class A FM radio station (which station presently bears the call sign WAMJ(FM)) on Channel 298 in Roswell, Georgia (FCC File No. BPH-870727MF), with a transmitter on a building roof at 1050 Crown Pointe Parkway, Atlanta, Georgia (the "Crown Pointe Site") with the following coordinates: 33°55'48" North Latitude and 84°20'45" West Longitude (which Dogwood believes should be corrected to 33°55'54" North Latitude and 84°20'43" West Longitude); and

WHEREAS, Dogwood has completed construction, is now operating the station under Program Test Authority, and has filed a Form 302 license application with the FCC (File No. BLH-971222KH), which is still pending, to cover the CP; and

WHEREAS, Dogwood filed a Form 301 "one-step" upgrade application on March 9, 1998 (FCC File No. BPH-980309IE) to, *inter alia*, upgrade its CP to a Class C3 FM radio station with increased power to operate on Channel 298C3 at a different transmitter site (the "Upgrade Application"); and

WHEREAS, Dogwood's Upgrade Application remains pending at the FCC; and

WHEREAS, USBLP is licensed by the FCC to operate radio station WPEZ(FM) in Macon, Georgia; and

WHEREAS, on February 20, 1998, the FCC released a Notice of Proposed Rule Making ("NPRM") in MM Docket No. 98-18 requesting comments on a proposal to amend the Table of Allotments for FM broadcast stations which would, *inter alia*, modify the license for WPEZ(FM) to specify operations on Channel 300C1 in Hampton, Georgia; and

WHEREAS, USBLP filed comments in MM Docket No. 98-18 in support of the FCC's proposal in the NPRM; and

WHEREAS, Dogwood filed comments in MM Docket No. 98-18 in opposition to the reference point proposed by USBLP and the FCC in the NPRM for the WPEZ(FM) transmitter site because, *inter alia*, the reference point for the transmitter site in that latter proceeding would conflict with the engineering proposal in Dogwood's Upgrade Application; and

WHEREAS, Dogwood and USBLP are desirous of resolving the conflict among their respective positions as disclosed in the comments filed with the FCC in the *NPRM*;

NOW, THEREFORE, in view of the foregoing and the mutual promises and covenants contained herein, the parties hereby agree as follows:

1. Change of USBLP's Reference Point. By August 7, 1998, if practical, but in no event later than ten (10) business days following the date of this Agreement as set forth above, USBLP will file comments with FCC in the *NPRM* asking that the reference point specified in USBLP's rulemaking petition and comments be deleted and that the reference point for the WPEZ(FM) transmitter site be changed to the following: 33°15'04" North Latitude and 84°25'10" West Longitude.

2. Modification of Dogwood's Upgrade Application. By August 7, 1998, if practical, but in no event later than ten (10) business days following the date of this Agreement as set forth above, Dogwood will (a) file an amendment to its Upgrade Application with the FCC to specify the Crown Pointe Site as the transmitter site for its proposal to upgrade the station class covered by its CP and (b) withdraw with prejudice any and all comments and reply comments in MM Docket 98-18 opposing the modification of the WPEZ(FM) transmitter site and file comments in MM Docket 98-18 which support the proposed modification of the licenses for WPEZ(FM) with the amended reference point.

3. Service of Documents. Each party will simultaneously serve on the other party a copy of any and all documents which such party files with the FCC under paragraphs 1 and 2 above as well as copies of any and all communications to or from the FCC concerning their respective filings as well as pleadings and other documents filed with the FCC by third parties with respect to the filings made under paragraphs 1 and 2 (except to the extent the communication, pleading, or other document shows on its face that a copy has already been served on the other party).

4. Reciprocal Conditions Precedent. The changes proposed to the reference point and the Upgrade Application, as well as the documents to be separately filed by the parties as specified in paragraphs 1 and 2 above, are mutually contingent, and neither party will be obligated to file or retain any of the changes or file any comments with the FCC if the other party does not make or retain the requisite filings with the FCC as required by this Agreement. Once those documents are filed, however, neither party may withdraw or modify its position as specified herein in a manner which will adversely affect the other party's proposed or requested modification of their respective FCC authorization as delineated in this Agreement. Neither party hereto shall make or submit any oral or written comments with the FCC or otherwise take any action, either directly or indirectly, to oppose or delay the grant of the other party's technical proposal as modified in accordance with this Agreement or the ability of such grant to become a "final order" (meaning that the order is no longer subject to reconsideration or review by the FCC or a court of competent jurisdiction).

5. Remedies. In the event that either party breaches or threatens to breach its obligations under this Agreement, the other party may pursue whatever remedies may be

available at law or in equity, including injunctive or other equitable relief for specific performance of a party's obligations under this Agreement. In the event that one party files an action against the other party for specific performance of this Agreement, that latter party shall waive the defense that the party instituting the action has an adequate remedy at law. Such waiver is premised on the parties' mutual understanding that their respective radio stations, along with the proposals delineated herein to change the operating parameters of those stations, represent unique assets and that monetary damages alone would be insufficient to compensate a party for the other party's breach of this Agreement.

6. **Construction.** This Agreement shall be construed in accordance with the laws of the State of Georgia without regard to that jurisdiction's conflict of laws provisions.

7. **FCC Disclosure and Approval.** Dogwood and USBLP will cooperate with each other in making any disclosure of this agreement to the FCC, filing any certifications or other documents with the FCC and taking any other action which may be required by applicable law, including but not limited to FCC rules and policies. Such cooperation shall include but not be limited to the use of commercially reasonable efforts to coordinate their filings under paragraphs 1 and 2 above so that the filings are made simultaneously and cross-reference each other.

8. **Notices.** Any and all communications required or authorized by this Agreement shall be sent by hand, by certified mail - return receipt requested (postage prepaid), by facsimile (with confirmation of receipt), or by overnight courier (charges prepaid) to the parties at the following addresses (or at such other address which any party may designate in writing to the other party):

To Dogwood:

Frank W. Johnson, Jr., President
Dogwood Communications, Inc.
c/o WAMU(FM)
Suite 200
5526 Old National Highway
College Park, GA 30349

With a copy to:

Lewis J. Paper, Esq.
Dickstein Shapiro Morin & Oshinsky LLP
2101 L Street, N.W.
Washington, DC 20037

To USBLP:

Douglas M. Grimm, Executive Vice President
Magic Broadcasting II, Inc.,
General Partner of
U.S. Broadcasting Limited Partnership
Suite 700
544 Mulberry Street
Macon, GA 31202

with a copy to:

Irving Gastfreund, Esq.
Kaye, Scholer, Fierman, Hayes
& Handler LLP
Suite 1100
901 15th Street, N.W.
Washington, DC 20006

And

Michael J. Golub, Esq.
Bodzin & Golub, P.C.
Suite 329
1150 15th Street, N.W.
Washington, D.C. 20005

9. **Binding Effect.** This Agreement shall become effective on the date written above and shall be binding on the parties as well as on their assigns and successors, including, without limitation, successor licensees of, respectively, radio stations WPEZ (FM) and WAMI (FM).

10. **Entire Agreement.** This Agreement represents the entire understanding of the parties with respect to the subject matter hereto and supersedes any and all prior and contemporaneous agreements, understandings, and contracts. This Agreement may not be amended except by a document executed by both parties.

11. **Counterpart Signatures.** This Agreement may be signed in counterpart and all counterparts shall collectively be deemed to be one and the same document.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed the Agreement as of the date
first written above.

DOGWOOD COMMUNICATIONS, INC.

By: _____
Frank W. Johnson, Jr.
President

**U.S. BROADCASTING
LIMITED PARTNERSHIP
BY: MAGIC BROADCASTING II, INC.
ITS GENERAL PARTNER**

By: *Douglas M. Grimm*
Douglas M. Grimm
Executive Vice President

IN WITNESS WHEREOF, the parties have executed the Agreement as of the date
first written above.

DOGWOOD COMMUNICATIONS, INC.

By: Frank W. Johnson, Jr.
Frank W. Johnson, Jr.
President

**U.S. BROADCASTING
LIMITED PARTNERSHIP
BY: MAGIC BROADCASTING II, INC.
ITS GENERAL PARTNER**

By: _____
Douglas Grim
Executive Vice President

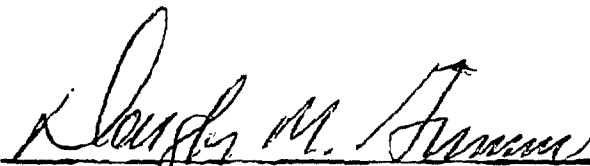
EXHIBIT 2

DECLARATION

I, Douglas M. Grimm, hereby declare, under penalty of perjury, that the following is true and correct:

1. I am Executive Vice President of Magic Broadcasting II, Inc., General Partner of U.S. Broadcasting Limited Partnership, licensee of WPEZ(FM), Macon, Georgia.
2. I have reviewed and executed the Agreement dated August 6, 1998 between Dogwood Communications, Inc. and U.S. Broadcasting Limited Partnership related to the Rulemaking in MM Docket No. 98-18. RM-9204.
3. Neither U.S. Broadcasting Limited Partnership nor its principals has received or will receive any money or other consideration in exchange for the execution of the aforementioned Agreement or any actions promised by U.S. Broadcasting Limited Partnership therein. Further, neither U.S. Broadcasting Limited Partnership nor its principals has paid or will pay any money or other consideration to Dogwood Communications, Inc. or any other party in return for Dogwood Communications, Inc.'s execution of the aforementioned Agreement and its actions promised therein.
4. The only consideration by U.S. Broadcasting Limited Partnership for its execution of the aforementioned Agreement is contained within the Agreement.

EXECUTED on this 7th day of August, 1998.



Douglas M. Grimm
Executive Vice President of Magic Broadcasting II, Inc.,
General Partner of U.S. Broadcasting Limited Partnership

CERTIFICATE OF SERVICE

I, Diane E. Bateman, a secretary in the law firm of Kaye, Scholer, Fierman, Hays & Handler, LLP, do hereby certify that on this 7th day of August, 1998, a copy of the foregoing "Reply Comments" was sent via First Class U.S. Mail, postage prepaid, to the following:

John A. Karousos, Chief *
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W.
5th Floor
Washington, D.C. 20554

Leslie K. Shapiro *
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W.
Room 564
Washington, D.C. 20554

Lewis J. Paper, Esquire
Dickstein, Shapiro, Morin & Oshinsky, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526

Werner K. Hartenberger, Esquire
Elizabeth A. McGeary, Esquire
Peter Siembab, Esquire
Dow, Lohnes & Albertson, P.L.L.C.
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6802


Diane E. Bateman

* Via Hand-Delivery